

**TITLE 16
BUREAU OF AUTOMOTIVE REPAIR**

**NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC HEARING
CONCERNING**

BRAKE INSPECTION AND REPAIR REQUIREMENTS

NOTICE IS HEREBY GIVEN that the Department of Consumer Affairs/Bureau of Automotive Repair (hereinafter “Bureau” or “BAR”) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at hearings to be held at the following locations on the following dates:

NORTHERN CALIFORNIA

Monday, May 21, 2012 at 3:00 PM
Department of Consumer Affairs
Hearing Room
1625 North Market Blvd
Sacramento, CA 95834

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be **received by the Bureau at its office no later than 5:00 p.m. on May 21, 2012**, or must be received by the Bureau at one of the above referenced hearings. **Comments sent to persons or addresses other than those specified under Contact Person, or received after the date and time specified above, regardless of the manner of transmission, will be included in the record of this proposed regulatory action, but will not be summarized or responded to.** The Bureau, upon its own motion or at the request of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE:

Pursuant to the authority vested by Sections 9882 and 9884.19 of the Business and Professions Code, and to implement, interpret or make specific Section 9880.1 of the Business and Professions Code, the Bureau is proposing to adopt the following changes to Article 8 of Chapter 1, Division 33, Title 16, California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

INTRODUCTION:

The Bureau of Automotive Repair (BAR) was established within the California Department of Consumer Affairs (DCA) in 1971 with the enactment of the Automotive Repair Act¹. BAR was created by Senate Bill (SB) 51 (Beilenson, Chapter 1578, Statutes of 1971), which mandated a statewide automotive repair consumer protection program. Finally, BAR is charged with protecting consumers in the automotive repair marketplace.

Through its statewide offices, BAR provides consumer protection services related to Title 16, Division 33, of the California Code of Regulations. BAR regulates Automotive Repair Dealers (ARD), Lamp and Brake stations and adjusters, and Smog Check stations and technicians. BAR receives and mediates complaints from the public, investigates violations of the Automotive Repair Act, Smog Check laws, and associated regulations. When appropriate, cases are referred to the Attorney General's Office or law enforcement authorities for administrative action, civil, and/or criminal prosecution.

BACKGROUND:

In calendar year 2010, 723 or 4.4% of the complaints received by BAR were related to brake service and repairs. As a result of some of these complaints, BAR launched investigations into multiple companies who appear to use false and misleading advertising to lure customers into unnecessary repair services.

These investigations found that customers were often presented with cheap brake specials and then charged hundreds of dollars for unnecessary repair services. The shops also billed customers for parts and services that were not provided. Some shops sold or attempted to sell unneeded goods and services at substantially higher costs than the advertised brake specials. BAR found that the shops did not intend to sell the advertised brake services and repairs at the advertised prices, but intended to entice customers into more costly transactions.

The BAR Enforcement Division has found that the overselling of services has become an increasing problem. On average, the shops charged BAR undercover agents close to \$300 in unnecessary brake rotor resurfacings, brake drum repairs, brake adjustments, brake cleaning services, and other services.

Due to concerns identified by trade organizations and the BAR Enforcement Division, BAR has deemed it necessary to establish minimum standards for ARDs that engage in brake inspections and repairs.

EFFECT OF REGULATORY ACTION

BAR proposes to adopt the following regulatory changes:

¹ Business and Professions Code § 9880, et seq.

BRAKE SERVICE INSPECTION AND REPAIR REQUIREMENTS

This proposed action creates minimum trade standards for the inspection and repair of brake friction materials. These standards will help ensure consumers receive an accurate diagnosis of their brake condition and consistent recommendations for repair or replacement.

The proposed action will make the following changes to existing regulation:

1. Add Section 3369.1 of Article 8 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:

- a. Add subsection (a) and (b) to regulation text.

This section requires an ARD, when performing a brake inspection, to visually inspect all brakes on the vehicle, to follow the current brake friction material and brake rotor or drum service standards, specifications, and procedures, as established by the vehicle manufacturer, and to provide a written invoice with the numeric brake inspection results to the consumer. Additionally, separate and distinct parking brake systems do not need to be inspected as part of this check.

2. Add Section 3369.2 of Article 8 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:

- a. Add subsection (a) to regulation.

If authorized by a consumer, an ARD must replace brake pads, shoes, rotors, and drums that do not meet the manufacturer's specifications for thickness or safe operational condition with new or remanufactured parts that meet the manufacturer application and fit. Additionally, brake rotors or drums may be resurfaced not to exceed the vehicle manufacturers established "machine to" or "discard" specifications.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

BAR has evaluated this regulatory proposal and it is not inconsistent, nor incompatible with existing state regulations.

As described in Business and Professions Code (B&P) section 9882, BAR is the state agency solely responsible for enforcing and administering the automotive repair industry.

FISCAL IMPACT ESTIMATES

FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES AND COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE:

No cost or savings to state agencies and in federal funding to the state.

This proposed regulation only sets minimum brake inspection and repair standards, which ARDs would be required to meet.

NONDISCRETIONARY COSTS/SAVINGS TO LOCAL AGENCIES:

None.

LOCAL MANDATE:

None.

COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH GOVERNMENT CODE SECTIONS 17500-17630 REQUIRES REIMBURSEMENT:

None.

BUSINESS IMPACT:

BAR has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

BAR does not anticipate any new reporting, recordkeeping or other compliance requirements as a result from the proposed action.

The proposed regulation only sets minimum standards for automotive brake inspections and repairs. Most ARDs currently meet or exceed the proposed standard. Nothing prevents an ARD from improving their brake inspections and repair services to comply with this proposed regulation. Additionally, this proposal does not require ARDs to purchase any new equipment.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

BAR is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The majority of businesses already exceed the proposed standards. Instead, this regulation targets low performing stations and ARDs that are using deceptive advertising practices. This proposed regulation sets minimum standards for brake inspections and repairs which an ARD is required to meet.

EFFECT ON HOUSING COSTS:

None.

EFFECT ON SMALL BUSINESS:

The proposed brake inspection and repairs seeks to establish minimum trade standards only. As a result, no additional burden will be placed on small businesses.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

BAR has made an initial determination that the proposed regulatory action will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, the expansion of businesses, worker safety, and the state's environment.

This regulation may improve the health and welfare of California residents. Consumers that receive improper brake inspections and repairs may choose to file a complaint against the ARD with BAR. This action can be time consuming for consumers. This proposed action may help to reduce the number of complaints filed with BAR. Thus, this proposal may save consumers valuable time and money.

CONSIDERATION OF ALTERNATIVES

BAR must determine that no reasonable alternative, which it considered or that has otherwise been identified and brought to its attention, would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

BAR has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau of Automotive Repair at 10240 Systems Parkway, Sacramento, California, 95827.

AVAILABILITY AND LOCATION OF THE RULEMAKING FILE AND THE FINAL STATEMENT OF REASONS

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the persons named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web site listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

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The backup contact person is:

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WEB SITE ACCESS

Materials regarding this proposal can also be found on the BAR's Web site at www.smogcheck.ca.gov.